

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15675 of 2017

1. Mahendra Narayan Mandal,
 2. Radha Krishan Mandal
- Both Sons of Late hari Nandan Mandal, Resident of Village-Bella, P.O.-Rahiyar Konchi, P.S.-Hathauri, Anchal-Shivaji Nagar District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Revenue and Land Reforms, Government of Bihar, Patna.,
 2. The Collector-Cum-District Magistrate, Samstipur.
 3. The Sub Divisional Officer, Rosara, Smastipur.
 4. The Superintending of Police, Samastipur.
 5. The Circle Officer, Shivaji Nagar, Rosara, Samstipur.
 6. The Officer-in-Charge, Police Station, Hathauri, Samastipur.
 7. Gauri Shanker Mandal, Son of Late Ram Chander Mandal.
 8. Jata Shanker Mandal, Son of Late Ram Chandra Mandal.
- Respondent Nos. 7 and 8 are Resident of Village-Bella, P.O.-Rahiyar Konchi, P.S.-Hathauri, Andhal-Shivaji Nagar District-Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey, Adv.
For the Respondent/s : Ms. Sanghmitra Ghosh, AC to GP-15

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 31-07-2018

Heard learned Counsels for the petitioners and the respondent-State.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the public road, appertaining to Khata No.887, Plot No.2454 (part), 2464 (old), 2805 (new), 2803 (part), situated in Village-Bella, in the District of Samastipur.

Since the writ application was registered on



01.11.2017, but no counter affidavit has been filed till date and in view of the nature of order this Court intends to pass, this Court is neither inclined to adjourn the matter nor inclined to issue notice to Private Respondent Nos.7 and 8.

It is submitted by learned counsel for the petitioners that the land in question is a public road and is recorded in the Khatiyan as 'Anabad Public Common Way', but the same has been encroached upon by Private Respondent Nos. 7, 8 and others, by making illegal construction over the same. For removal of encroachment, the petitioners submitted representations before the Respondent No.5, the Circle Officer, Shivaji Nagar, on 03.09.2016 and 12.05.2017, as contained in Annexures- 2 series respectively. A complaint was also filed before the Sub-Divisional Public Grievance Redressal Officer, Rosera, on 12.06.2017, as contained in Annexure-3 and thereafter before the Respondent No.4, the Superintendent of Police, Samastipur, on 16.06.2017, as contained in Annexure-4, but no action was taken. Ultimately, the petitioners submitted a representation before the Respondent No.2, the District Magistrate, Samastipur, on 13.07.2017, as contained in Annexure-5, but till date neither any proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as



‘the Act’) has been initiated, nor the encroachment has been removed from the land in question. Hence, the present writ application.

It is submitted by learned AC to GP-15 that, at present, she is not having any instruction whether the land in question is a public land/road or not, but if it is a public land/road and the same has been encroached upon, then a proper proceeding under the provisions of the Act will be initiated forthwith, if it has not been initiated and the same will be taken to its logical conclusion within a time frame.

The sine qua non for initiating a proceeding for removal of encroachment is prescribed under Section 3 of the Act which stipulates that if it appears to the Collector under the Act from an application made by any person or upon information received from any sources that any person has made or is responsible for the continuance of any encroachment upon any public land, he will initiate a proceeding under the Act.

No doubt, in the present case, the representation was made before the Circle Officer, Shivaji Nagar, firstly, on 03.09.2016 and secondly, on 12.05.2017, which gets reflected from Annexure-2 series, but there is nothing on record to suggest that any proceeding has been initiated till date or any



effort has been taken to come to the finding whether the land in question is a public land or not, which suggests the callous manner in which the office of the Circle Officer is functioning.

In the circumstances, the Respondent No.5, the Circle Officer, Shivaji Nagar is expected to examine the revenue records and if need be to conduct spot verification, whereupon, if it appears to him that public road/land has been encroached upon, then he will initiate a proceeding forthwith with regard to the land in question in accordance with the provisions of Act, if it has not already been initiated and will take such proceeding to its logical conclusion within a period of three months, by giving due opportunity of hearing to all affected persons, including Respondent Nos.7 and 8 and the petitioners, in accordance with the provisions of the Act.

The Writ application is, accordingly, disposed of with the observation aforesaid.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

